

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA

BEEF PRODUCTS, INC.,  
BPI TECHNOLOGY, INC., and  
FREEZING MACHINES, INC.,

Plaintiffs,

v.

AMERICAN BROADCASTING  
COMPANIES, INC., ABC NEWS, INC.,  
DIANE SAWYER, JIM AVILA, DAVID  
KERLEY, GERALD ZIRNSTEIN, CARL  
CUSTER, and KIT FOSHEE,

Defendants.

No. 4:12-cv-04183

Hon. Karen E. Schreier

ORAL ARGUMENT REQUESTED

**PLAINTIFFS' MOTION TO REMAND**

Pursuant to 28 U.S.C. § 1447(c), Plaintiffs Beef Products, Inc., BPI Technology, Inc. ("BPI Tech"), and Freezing Machines, Inc. ("FMI") (collectively, "Plaintiffs"), by and through their attorneys, respectfully move the Court to remand this action to the Circuit Court of Union County, South Dakota. In support of this motion, Plaintiffs state as follows:

1. On September 13, 2012, Plaintiffs filed this action in the Circuit Court of Union County, South Dakota. Federal diversity jurisdiction does not exist, because there is not complete diversity of citizenship between Plaintiffs and Defendants—Plaintiffs BPI Tech and FMI are Delaware corporations, as are Defendants American Broadcasting Companies, Inc. ("ABC") and ABC News, Inc. ("ABC News").

2. On October 24, 2012, Defendants ABC, ABC News, Diane Sawyer, Jim Avila, and David Kerley removed this action to this Court on the basis of diversity jurisdiction. (Dkt. 1

¶1.) Defendants argue that BPI Tech's and FMI's citizenship should be disregarded for diversity purposes because those Plaintiffs are not "real parties in interest." (*Id.* ¶2.)

3. As explained in Plaintiffs' Memorandum in Support of Their Motion to Remand, which has been filed contemporaneously herewith, BPI Tech and FMI are, in fact, real parties in interest. Because there is not complete diversity of citizenship between Plaintiffs and Defendants, this Court lacks subject matter jurisdiction over this action.

Accordingly, Plaintiffs respectfully request that the Court enter an order remanding this action to the Circuit Court of Union County, South Dakota.

Plaintiffs respectfully request oral argument on this Motion to Remand.

Date: November 28, 2012

Respectfully Submitted,

/s/ Daniel L. Hartnett

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**CERTIFICATE OF SERVICE**

On November 28, 2012, the foregoing was filed electronically with the Clerk of Court using the CM/ECF system. Copies of the foregoing document will be served on all counsel of record automatically by operation of the Court's CM/ECF filing system.

/s/ Daniel L. Hartnett  
Daniel L. Hartnett